

ONEIDA COUNTY BOARD OF ADJUSTMENT
TUESDAY, JULY 11, 2006
8:30 A.M. – COMMITTEE ROOM #2
2ND FLOOR COURTHOUSE, RHINELANDER, WI 54501

Chairman Robert Fries called the meeting to order at 8:30 a.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Chairman Robert Fries “here”, Vice Chairman Robert Rossi “here”, Elmer Goetsch “here”, Harland Lee “here”, and Richard Meehan “here”, Alternate/Denny Thompson “here”.

Staff members present:

Pete Wegner, Assistant Zoning Director
Otona Felten, Secretary II

No other individuals were present.

Approve the agenda.

Motion by Harland Lee, second by Robert Rossi to approve the agenda. With all members present voting "aye", the motion carried.

Approve the meeting minutes of previous meetings as available.

The minutes of June 27, 2006 were presented.

Motion by Harland Lee, second by Richard Meehan to approve the meeting minutes of June 27, 2006 as presented. With all members present voting "aye", the motion carried.

Old Business: Discuss status of previous cases:

Pete Wegner, Assistant Zoning Director, informed the Board that previous *Appeal #05-012 James Carmichael*, has become an enforcement case because he has placed a boathouse in the area which was originally denied by the Board. Mr. Wegner noted that a “stop work order” was issued.

Current Business: Discuss current and pending appeals to BOA.

The Board questioned the status of *Appeal #06-002 Krueger vs. Dunbar*. Pete Wegner, Assistant Zoning Director, informed the Board that they are still working on negotiations.

Elmer Goetsch noted that *Appeal #06-004 Oneida County Sheriff's Department* is scheduled to be heard on July 25, 2006. Richard Meehan questioned the location of the tower in this case. Mr. Goetsch stated that the agent called and requested that this matter be pursued further. He indicated that the agent, Ken Korten Hof, would need to submit the justification to the Board prior to the hearing.

Current Business: Discuss current appeals to Circuit Court.

Nothing was discussed.

Current Business: Review and revise meeting schedule.

Nothing was changed.

Current Business: Discuss status of NR115 revision.

Elmer Goetsch informed the Board that the focus committees were to meet to set a date, still pending.

8:45 a.m. The Board of Adjustment recessed to conduct the scheduled onsite inspection for today's continuation of Appeal #06-003 Clair Wiederholt.

**ONEIDA COUNTY BOARD OF ADJUSTMENT
TUESDAY, JULY 11, 2006
1:00 P.M. – COMMITTEE ROOM #2
2ND FLOOR COURTHOUSE, RHINELANDER, WI 54501**

Chairman Robert Fries called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Richard Meehan “here”, Robert Rossi “here”, Elmer Goetsch “here”, Chairman Robert Fries “here” and Harland Lee “here”. Alternate/Denny Thompson “here”

Staff members present:

Pete Wegner, Assistant Zoning Director
Mary Bartelt, Typist III

Other individuals present

Clair Wiederholt
Connie Brayton
Dave Molan
Bob William
Jim Dummer
Tom Blake

Appeal #06-003 of Clair Wiederholt

Chairman Robert Fries called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting law.

Secretary Elmer Goetsch read into the record the continuation of Public Hearing for Appeal #06-003 of Clair Wiederholt.

Mr. Goetsch stated that the original Notice of Public Hearing for the meeting on June 27, 2006 was published in the Rhinelander Daily News on June 12, 2006 and June 19, 2006 and in the Lakeland Times the week of June 19, 2006. The certified and first class mailing lists were read into the record.

Secretary Elmer Goetsch noted that the Board of Adjustment prior to the original hearing did conduct an onsite and it was determined at that time that the location of the proposed structure and the property line had not been marked and therefore the onsite was terminated and the hearing was continued. The Board of Adjustment did conduct an onsite inspection again this morning at approximately 10:00 a.m., July 11, 2006.

Mr. Goetsch read the Onsite Report into the record.

For the record, Chairman Robert Fries went on to explain to those present that this is a public hearing and is held in accordance with the Wisconsin Open Meeting Law. It has been the practice of this Board to leave the door of the meeting room open so that anyone may enter. If it becomes difficult to hear because of noise in the hallway, Chairman Fries noted that the door would be closed. (A sign will be posted on the door stating that an open meeting is in progress and that anyone may enter.) Any testimony given will

be under oath and the party will be sworn in prior to testifying. The meeting will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several persons are talking at one time. Chairman Fries advised the appellants that the Board of Adjustment has the option to convene in closed session to deliberate, but normally that does not occur. The hearing is closed as to further testimony and the board members make a decision on the case. If the appellant does not agree with the Board's decision, then he or she may begin action with the Circuit Court within 30 days from the date of the decision.

At this time, Chairman Fries swore in the following individuals: Mr. Wiederholt, Connie Brayton and Pete Wegner.

Mr. Wiederholt stated to the Board of Adjustment that he would like them to grant him a variance for a 26' x 40' (not counting the eaves) three bedroom 1 ½ story home. At this point in time Mr. Wiederholt does not own the land, but is acting on behalf of the owner because he has an offer to purchase the property. The reason for the variance is because Mr. Wiederholt feels that the property is a hardship because the owner needs a variance to build on it. Mr. Wiederholt feels that the house is a modest house and would not detract from the setting of the property. Mr. Wiederholt also stated that there is a neighbor, who would be sharing an easement road for this property and having more people living there would spread the costs and the burden of taking care of that as well. Hopefully the electrical wires could be shared as well. Mr. Wiederholt also talked to the next-door neighbor and he had no objections of building on the property.

Mr. Goetsch, "Well, the ordinance says that you have to have a 75' setback, what variance are you asking for?"

Mr. Wiederholt, "According to my dimensions the peak of the house would be 60' from the water and the deck would be 52' from the water and from the other corner of the house would be 43' from the water. Mr. Wiederholt would like a variance, which would allow him to build the proposed house dimensions. The overall depth of the lot is 110' N/S and 256' E/W. This property is in Recreational 05 zoning district. Mr. Wiederholt also stated that he would be willing to give up part of the deck closest to the lake.

Mr. Goetsch, "Would you (Mr. Wiederholt) confirm the date that the property was recorded in their current dimension was 1956?"

Mr. Wiederholt, "I did go to the Register of Deeds office and yes, 1956 is the correct date.

Mr. Goetsch, "And this is going to be a two- story home?"

Mr. Wiederholt, "Well, a story and a half, the third bedroom will be under the roof at the back of the house (loft type)."

Chairman Robert Fries asks if there are any other questions.

Mr. Harland Lee, "You have no information from a plumber to date as to where, if this were approved, you would put the septic?"

Mr. Wiederholt, "I just have a bid from him at this time." "Mr. Dahlman." "And no, he has not been out on the property." "My understanding is that I would need a 50' setback from the OHWM for the septic system, is that correct?"

Mr. Rossi, "Was the plumber out to look at the property?"

Mr. Wiederholt, "No, he was not."

Mr. Meehan, "How can he give you price for a septic if he never looked at it?"

Mr. Wiederholt, "I'm not quite sure why he did that."

Mr. Meehan, "Has anyone checked it for a perc for a septic?"

Mr. Wiederholt, "No, we were waiting for this stop first because they all cost me \$500 a piece."

Chairman Fries asks if there is anything else.

Mr. Elmer Goetsch, "Exhibit #1-revised, based on the scale on this full scale drawing it is barely over 100' from the back lot line to the very tip of the OHWM."

Mr. Wiederholt, "I do have a tax form stating that it says 110' on it."

Mr. Pete Wegner, "The county would propose this which shows a foot print of 24' x 30' including the eaves of 26' x 34' for the one foot eave." "We propose that as reasonable use." "And then we would give him at least a 50' setback at its closest point, 50'."

Mr. Goetsch, "But you have a rectangular one flat against the back lot setback and one corner is 50', so why can't he be out to 50' all the way by the county and therefore increase the size of his building?"

Mr. Wegner, "I had to start somewhere." "We look at that as the most restrictive zoning district of single family." "You have to have at least a 720' minimum footprint."

Mr. Goetsch, "I thought you said it was recreational."

Mr. Wegner, "Yes, but I was giving in a little bit." "Recreational could be a 4' x 6' hotdog stand, but he is proposing this, I will hold him to the 720', which is single family zoning size." "This kind of goes along with what you see in that general area."

Mr. Goetsch, "Normally, if we grant a variance we would not say that one corner can't go past 50', we would say that he has a variance to allow construction up to 50', which would mean that he could build something a little bit larger." "Either that or you would want it rectangular and irregular in shape and more than 50' setback that is."

Mr. Goetsch asks if there are any comments about the deck.

Mr. Wegner, "That's not part of the county proposal, we eliminated that."

Mr. Goetsch, "Isn't he entitled to a separate independent gazebo?"

Mr. Wegner, "Not actually because to get that, the current ordinance requires you to calculate that square footage that's already in a 40' to 75' zone."

The committee all agree that Mr. Wiederholt is entitled to build something, but the question is what.

Mr. Harland Lee doesn't agree with that statement.

Mr. Goetsch, "The property is grand fathered and does allow residence."

Mr. Lee, "My concern is that is that we have a 75' setback from the OHWM and there apparently is some justification with the 75' setback." "Now, if all the pieces of property that have 75' setback which would allow a home to built on are gone, and the only pieces that are left are like this one, then everybody is going to come to various different boards looking for variances." "So, what is the purpose of the 75' setback to begin with, if everyone gets a variance to build something on what is otherwise a non-build able piece of property?" "Then the 75' setback is meaningless."

Mr. Goetsch, "Well the distinction is that this property is grand fathered." "This property was formed in apparently 1956, when no one had any idea that there would such a limitation in setbacks or other requirements." "To me and based on the previous experience which I had with the Board here is if it is a grand fathered property, you have to look at it a little differently." "I think we should hear from the DNR."

Mr. Tom Blake, "Does it meet the criteria laid out in the statutes of the common law?" "I will give you my opinion." "If the lot is build able and legally created and is grand fathered, they are entitled to a variance. But just because it's a legal lot doesn't mean that they are automatically entitled to a variance."

Mr. Lee, "If they are grand fathered, does that mandate a variance?" "It is my understanding that the request of this variance for this lot is not the first time a variance has been requested." "And the first variance request was turned down." "Is anything different now than then?"

Mr. Goetsch, "I don't know about that, the ordinance has changed, the attitude has changed, the policy guidance from the DNR has made some changes."

Jim Dummer – "I just had someone from the Planning & Zoning Department out at my place and in the ordinance it states 75' from the OHWM and I had no problem with that because I am building my house overlooking the lake because I like the lake and I don't want to do anything to hurt the lake." "In fact, I am moving the house ten more feet back to help prevent and control erosion." "The thing about variances, I'm a little bit of a libertarian myself and in the respectable think of taking." "The person who is applying for the permit doesn't even own the property right now, so how come we can be taking from him if we deny him the zoning thing?" "And the boy scouts were donated the property after the last variance was denied." "Then the boy scouts decided to sell the property." "It just doesn't make any sense to me that some people have to follow the rules and other people, because they buy something that they know can't work, expect to not have to follow the rules." "Wind Pudding Lake is an incredible special place." "The thing that I'm worried about is if you put a house on this property, it will change the feel of that part of the lake dramatically, because like Mr. Wiederholt said, all of his trees are cleared and you will see that house sitting out at that point no matter where you are on the lake."

Bob Williams, 8758 S. Wind Pudding Dr., Hazelhurst.

"I'm president of the Wind Pudding Lake Association which has been in existence for 15 years." "I can't give you a date when the Board of Adjustment denied the last variance request because I found out after the fact when a zoning change was being requested." "At that time the Lake Association opposed the change because we felt that if it was changed to Single Family, another variance could be applied for and have a better chance of getting it." "I'm concerned about the waste disposal." "I would think that they would have had the waste disposal system clarified before this meeting so people could base their decision on all the facts." "Right now we don't know where the septic system would be or if there will be a septic system or holding tank, which I understand must be 50' from the OHWM also?"

Mr. Pete Wegner, "The holding tank can be less then 50' from the OHWM."

Mr. Williams, "I talked to several of our full time residents on Wind Pudding Lake." "I think South Wind Pudding Lake was platted out in the 60's, because all of our properties are at least 75' back from the OHWM." "This property would be the only property closer to the lake then the 75' setback and that is the feeling of most of our lake association members, that they don't feel that one piece of property should be less then 75'." "And based on that, the association would be opposed to the variance."

Mr. Williams asked that if there is a lake association involving a situation like this, why can't the Board of Adjustment send a notice to the Lake Association president and asks that they do this. Board agrees. There are 58 lake associations in Oneida Lake.

Mr. Goetsch clarifies the reasons why the first variance was denied before. "Formerly and under the previous appeal, one of the criteria to be met was: unnecessary hardship exist when, without a variance, no reasonable use." "And our determination was well it's recreational, you can camp there and can do any of these which are reasonable uses." "But now, that criteria has changed and now it reads, unnecessary hardship exists when compliance with unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Mr. Lee, "Well, I would stress to you Mr. Goetsch that Mr. Wiederholt is not the owner."

Mr. Goetsch, "Doesn't the same criterion apply?"

Mr. Lee, "If I were a lawyer, I would say no, but I'm not a lawyer."

Mr. Goetsch, "I think we would have to take a look at what the precise words of the Supreme Court to see if that word, owner, was actually in there." (case law)

Mr. Blake, "Yes the word, owner, is in there." EXHIBIT #3

Connie Brayton – PO Box 395, Elcho, WI 54428

"I represent the Boy Scouts so actually when it came to the issue of rezoning, the Boy Scouts, who are on a budget. Me as an agent is to get the seller the best price. As far as Mr. Wiederholt building a property on that lot, I think he enjoys the lake just the way it is too and I don't think he's wanting to change anything." "I guess if he has to put a holding tank in, I don't think that that is a big issue." "To prevent the Boy Scouts from incurring any more expenses, that is why we had Mr. Wiederholt apply for the variance."

Tom Blake – DNR

“Because this property is a point, it has more issues from the Board’s perspective and from the Planning & Zoning Department.” “The could have three sides on the water, so the public interest is more focused on this property then traditional waterfront.” “Specifically, I think the deck which is proposed within 75’ is a necessary burden.” “This is a burden which needs to be carried to meet the public interest.” “It would be contrary to public interest to have a deck that large.” “A deck is a personal convenience and the case law is that a personal convenience is not warranted by a variance.” “The Board would want to take in consideration the position of the home and the size of the home.” “It is my understanding that you should be looking at the purposes in the ordinance and why there is a setback.” “Section 9.11 has the specific goals and purposes.” “This is a tuff issue that you are dealing with, but that the direction that you go with, to make sure that you take a close look at those, whether approval or denial, that you base your decision on what the ordinance is trying to accomplish with those specific standards.” “It is a 1 ½ two story and the footprint is 24’ x 30’ and you as a Board should take that is consideration and might suggest a smaller footprint.” “Hardship is here, whether necessary or not necessary is the question.” “Try to minimize the impact, keep the natural beauty and maximize by trying to attain the goals which are stated in the ordinance.” Mr. Blake read from a case law. EXHIBIT #4

2:07 p.m. The Board closed the public hearing for deliberations.

Mr. Goetsch discussed the criteria that the Board must consider when granting a variance involving unnecessary hardship, physical property limitations and public interest.

The Board discussed limiting the size of the proposed dwelling in overlay district #1 to a minimum of 720 square feet (26’ x 24’) or limiting the variance being granted thereby limiting the dwelling size in that way, as long as the dwelling stays 50’ from the OHWM.

Motion by Elmer Goetsch, second by Harland Lee to grant the variance to allow construction of a residence no closer than 50’ from the OHWM with a 720’ footprint and a minimum width of 24’. Roll Call Vote: Dick Meehan “aye”, Robert Rossi “aye”, Elmer Goetsch “aye”, Robert Fries “aye”, Harland Lee “aye”. Motion carried.

Hearing closed at 2:29 P.M.

Committee disgusted appeal #006-002.

Motion by Elmer Goetsch, second by Dick Meehan to take up case #006-02 on September 12, 2006. All “aye” on voice vote. Motion carried.

2:30 p.m. Board Adjourns.